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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 27 Original

THE STATE OF OHIO,

*Plaintiff,*

vs.

THE COMMONWEALTH OF KENTUCKY,

*Defendant.*

## MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

The State of Ohio, by its Attorney General, asks leave of the Court to file an amended complaint against the Commonwealth of Kentucky, submitted herewith.

WILLIAM J. BROWN,
*Attorney General of Ohio,*

DONALD B. LEACH,
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*Counsel for Plaintiff,*
*The State of Ohio.*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 27, Original

THE STATE OF OHIO,

*Plaintiff,*

vs.

THE COMMONWEALTH OF KENTUCKY,

*Defendant.*

## AMENDED COMPLAINT

The State of Ohio, by its Attorney General, brings this action against the Commonwealth of Kentucky, and for its causes of action states:

1. The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, and under Section 1251 (a) (1), Title 28, United States Code.

2. The plaintiff, since the 1st day of March, 1803, to the present, has been a State of the United States.

3. The defendant, since the 1st day of June, 1792, to the present, has been a State of the United States.

4. The State of Ohio was established pursuant to Article 5 of the Ordinance of July 13, 1787, adopted by Congress for the government of the territory of the United States northwest of the river Ohio. This act is known as the "Ordinance of 1787".

5. The Commonwealth of Kentucky, which was originally included within the Commonwealth of Virginia, was established pursuant to an act of the General Assembly of Virginia, entitled "An Act concerning the erection of the district of Kentucky into an independent state," passed on the 18th day of December, 1789. This Act, known as the "Virginia-Kentucky Compact", was approved by Congress on February 4, 1791, to become effective on June 1, 1792.

6. The various acts which resulted in the establishment of the two States described the boundary between them only as the Ohio River. It has never been determined authoritatively where that boundary lies in the Ohio River. Ohio has claimed that it lies in the middle of the River; or, at least, that it lies at the low water mark on the northerly side of the River as it existed in the year 1792. Kentucky has claimed that the boundary lies at the present low water mark on the northerly shore.

7. The question of the boundary line between the two states has become acute in recent years because of a considerable rise in the water level in the Ohio River. During the period from 1910 to 1929 the United States Government, acting through the Army Corps of Engineers, erected a series of dams in the Ohio River for navigational purposes. The result was a

rise in the general level of the River and permanent inundation of various areas on the Ohio shore. From 1885 to the present time the Corps of Engineers has been replacing the original dams with new ones which are higher, are designed to achieve better navigational conditions. These new dams are causing, and will cause, the permanent inundation of much greater areas on the Ohio shore.

I

1. The claim of the Commonwealth of Kentucky to a boundary at the low water mark on the northerly shore of the Ohio River is founded upon the fact that Kentucky was still a part of the Commonwealth of Virginia between 1774 and 1784, during the Revolutionary War and during the period when the United States were operating under the Articles of Confederation. At that time the Commonwealth of Virginia claimed title to the land on both sides of that part of the Ohio River which now flows between Kentucky and Ohio. This claim of title was violently opposed by many others of the thirteen original States, several of whom had conflicting claims of title to the same territory north of the Ohio River. The Continental Congress, fearing disintegration of the Union, refused to decide the question of title, and suggested that the individual States surrender their claims of title to the United States for the good of all. All of the claimant States eventually did so. Thus, the representatives of Virginia in the Continental Congress, on March 1, 1784, pursuant to an act of the General Assembly of the Commonwealth of Virginia, ceded to the United States, for the common good of all the States, all Virginia's "right, title, and claim" to the land northwestward of the Ohio River. This act, known as the "Cession of Virginia", was a compromise of Virginia's claim of title.

2. Despite its claim, the Commonwealth of Virginia actually had no title to the land north of that portion of the Ohio River which now flows between Kentucky and Ohio. Virginia's claim rested upon the terms of a charter issued by King James I to the London Company in 1609, which charter, beginning from certain specified points on the Atlantic coast, purported to grant to the Company all the continental lands "from sea to sea, west and northwest." It is obvious from historical records that King James had no conception of the distance between the Atlantic and the Pacific Oceans, and that he had no intention of granting such an enormous expanse of territory. Furthermore, regardless of the validity of Virginia's original claim, its extent was sharply curtailed by subsequent events. The charter of the London Company was revoked in 1624, and Virginia became a crown colony; shortly after 1650 the French moved into the middle of the continent and for almost a hundred years held control of the Mississippi and the Ohio valleys until driven out by the British during the French and Indian War; by the Treaty of Paris, which terminated that war in 1763, the French ceded to the British Crown the entire eastern Mississippi valley north of the Ohio River and west of the Allegheny Mountains; by a royal Proclamation, issued on October 10, 1763, the British Crown reserved all of that land to the Indian tribes which had assisted the British in the war, and confined the American colonies to the eastern side of the Allegheny Mountains; by the Treaty of Fort Stanwix, concluded between the British Crown and the Indians of the Six Nations, in November, 1768, the boundary between the Indian lands and the colonies was pushed westward across the mountains to a line drawn from northwestern Pennsylvania down the Allegheny and the Ohio Rivers, but the colonists were still forbidden to go north and west of that line; and by the Quebec Act, enacted by parliament and approved by the Crown in 1774, all the territory north and west of the Ohio

River was made a part of the Province of Quebec.

2. The Commonwealth of Virginia did not, at the time of its so-called Cession, have title to the land on the north side of that part of the Ohio River which now flows between Kentucky and Ohio. Virginia was not, therefore, the common proprietor of both sides of the Ohio River, and its boundary ran at most, to the middle of the River. The Commonwealth of Kentucky, being successor to Virginia, is entitled to no more.

II

1. In the alternative, should the Court decide that the boundary line lies at the low water mark on the northerly side of the Ohio River, that line should be established at the low water mark as it existed in 1792 when the Commonwealth of Kentucky became a State.

2. The low water mark, as of 1792, on the northerly side of that portion of the Ohio River which flows between Kentucky and Ohio can be established by satisfactory evidence.

3. From 1896 to 1908 the United States Army Corps of Engineers, in preparation for construction of the series of navigational dams referred to above, made a comprehensive, reliable, and monumented survey of the Ohio River, establishing the low water marks of the River as a part thereof.

4. The location of the low water mark on the northerly side of the Ohio River for over a hundred years prior to the Corps of Engineers' survey can be determined by the records of a number of other surveys, beginning with one made in

1766, under orders of Lieutenant General Thomas Gage, commanding general of the British forces in North America, by Captain Harry Gordon, his Chief Engineer, and Lieutenant Thomas Hutchins.

5. Engineering studies comparing these earlier surveys with that of the Corps of Engineers show that, from 1766 until the construction of the navigational dams, there was no appreciable variance in the course of the Ohio River between the Commonwealth of Kentucky and the State of Ohio, and no appreciable variance in the low water mark on the northerly shore of the River.

6. The recent elevation of the low water mark on the northerly shore of the Ohio River, caused by the construction of the various navigational dams, did not result in an accretion of territory to the Commonwealth of Kentucky.

III

1. Under the authority of Article 4 of the Ordinance of July 13, 1787, by which Congress provided for the government of the territory of the United States northwest of the Ohio River, the navigable waters leading into the Mississippi River, including, of course, the Ohio River, "shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, import, or duty therefor."

2. Under the authority of Paragraph 11 of the Virginia-Kentucky Compact, which was approved by Congress, "***the use and navigation of the river Ohio, so far as the territory of

the proposed state [Kentucky], or the territory which shall remain within the limits of this commonwealth [Virginia] lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this commonwealth, and of the proposed state on the river aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river."

3. In reliance upon these enactments of Congress, the State of Ohio has always claimed that it has concurrent jurisdiction with the Commonwealth of Kentucky over that portion of the Ohio River which flows between the two States.

4. The Commonwealth of Kentucky, while conceding that the jurisdiction of the State of Ohio over the Ohio River is concurrent with her own, nevertheless insists that the jurisdiction of the State of Ohio is not joint and equal. By acts and statements of its officials the Commonwealth of Kentucky, in effect, claims exclusive jurisdiction over the entire Ohio River.

All efforts to resolve these disputed issues by compact have failed, and the original jurisdiction of this Court is invoked because there is urgent need for prompt and final settlement of the controversy.

WHEREFORE, the State of Ohio prays that a decree be entered declaring its rights against the Commonwealth of Kentucky, to wit:

1. that the boundary line between the two States lies at the middle of the Ohio River; or

2. in the alternative, that the boundary line between

the two States lies at the low water mark on the northerly shore as that mark existed in 1792; and

3. that the State of Ohio and the Commonwealth of Kentucky have concurrent jurisdiction over that part of the Ohio River which flows between them; and

4. for such further relief as may seem proper to this Court.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 27, Original

THE STATE OF OHIO,

*Plaintiff,*

vs.

THE COMMONWEALTH OF KENTUCKY,

*Defendant.*

## MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

In its original complaint the State of Ohio conceded that it had been established from land ceded by the commonwealth of Virginia to the United States in the Cession of 1784; that Virginia, being the original proprietor on both banks of the Ohio River, retained a boundary line at the low water mark on the River's northerly side; and that the Commonwealth of Kentucky, having been formed from Virginia, succeeded to Virginia's rights. As a result of further research, and in view of the new high level dams, we are now forced to conclude that Virginia had no title in 1784 to any of the land on the north bank of that part of the Ohio River which flows between Kentucky and Ohio; that Virginia surrendered nothing but a baseless claim by her so-called Cession; and that the true boundary line between

the Commonwealth of Kentucky and the State of Ohio lies in the middle of the River. We ask leave to amend our complaint, therefore, so that the Court may be able to enter a judgment on the full scope of the merits of this controversy.

We respectfully submit, (1) that this Court has always decided boundary disputes between States upon the merits wherever possible; (2) that the present controversy between Kentucky and Ohio has never been authoritatively decided; and (3) that the evidence to support the conclusion that the boundary line lies in the middle of the Ohio River is overwhelming.

I

## THIS COURT WILL DECIDE A BOUNDARY DISPUTE BETWEEN STATES UPON THE MERITS WHEREVER POSSIBLE.

Boundary disputes between States, although essentially political in nature (cf. Rhode Island v. Massachusetts, 12 Pet. 657, 736-751 (1838), and dissent by Chief Justice Taney, at pp. 752-754), have been specifically committed to this Court's jurisdiction by Article III, Section 2, Clause 2, of the Constitution. Because of the delicate nature of such cases this Court has consistently held that they are to be handled "with a view to public convenience and the avoidance of controversy." *Vermont v. New Hampshire*, 289 U. S. 593, 606 (1932), quoting *Handly v. Anthony*, 5 Wheat. 374, 383 (1820). The proceeding is equitable in nature, but "it will be the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned are too great to be decided upon the mere technicalities of chancery pleading. * * * [A]nd in a case like the present, the

most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength." *Rhode Island v. Massachusetts*, 14 Peters 210, 257 (1840). "The case is to be considered in the untechnical spirit proper for dealing with a quasi international controversy, remembering that there is no municipal code governing the matter, and that this court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislatures of either state alone. [Citation]. Therefore we shall spend no time on objections as to multifariousness, laches, and the like, except so far as they affect the merits, with which we proceed to deal. [Citations]." *Virginia v. West Virginia*, 220 U. S. 1, 27 (1910).

In a later proceeding in the case just cited, West Virginia, over the objection of Virginia, sought leave to file a supplemental answer. This Court conceded that, under the circumstances of West Virginia's motion, the ordinary rules of procedure would render it impossible to grant the request, had it been made in a case between ordinary litigants. However, since the disputants were States, the Court said, *Virginia v. W. Virginia*, 234 U. S. 117, 121 (1913):

> We are of the opinion, however, that such concession ought not to be here controlling. As we have pointed out, in acting in this case from first to last the fact that the suit was not an ordinary one concerning a difference between individuals, but was a controversy between states, involving grave questions of public law, determinable by this court under the exceptional grant of power conferred upon it by the Constitution, has been the guide by which every step and every conclusion hitherto expressed has been controlled. And we are of the opinion that this guiding principle should

not now be lost sight of, to the end that when the case comes ultimately to be finally and irrevocably disposed of, as come ultimately it must, in the absence of agreement between the parties, there may be no room for the slightest inference that the more restricted rules applicable to individuals have been applied to a great public controversy, or that anything but the largest justice, after the amplest opportunity to be heard, has in any degree entered into the disposition of the case. This conclusion, which we think is required by the duty owed to the moving state, also in our opinion operates no injustice to the opposing state, since it but affords an additional opportunity to guard against the possibility of error, and thus reach the result most consonant with the honor and dignity of both parties to the controversy.

See also similar rulings in the same case at 222 U. S. 17 (1911) and 231 U. S. 89 (1913).

II

## THE PRESENT BOUNDARY DISPUTE BETWEEN KENTUCKY AND OHIO HAS NEVER BEEN AUTHORITATIVELY DECIDED.

Shortly after the Declaration of Independence the permanence of the confederacy of the thirteen original States was seriously threatened by a dispute in the Continental Congress concerning the title to, and the disposition of, the lands north and west of the Ohio River which ultimately became the Northwest Territory. Virginia, New York, Massachusetts and Connecticut, relying upon original charter grants from the King, presented to Congress conflicting claims of title either to the whole, or to parts of these vacant western lands. Other States

whose western boundaries had been definitely fixed in their charters, notably Pennsylvania and Maryland, argued that title to the western lands lay in the British Crown, and that it had devolved upon the United States at the signing of the Declaration of Independence. Maryland refused to sign the Articles of Confederation until some satisfactory disposition had been made of the question. On November 3, 1781, a committee, appointed by Congress to study the various claims, submitted a report denying the validity of Virginia's claim of title and affirming the claim of New York. This report came before Congress for consideration on May 1, 1782, but no action was ever taken on it. Instead, Congress, fearful that the disputes would dissolve the confederacy of the States, refused to decide the issue of title, and urged all the States who had claims to vacant lands to cede them to the United States for the common good. All, including Virginia, did so, leaving the question of Virginia's title, and, coincidentally, of its boundary in the Ohio River, undecided.[1]

It has been said that the Kentucky-Ohio boundary has been settled by a series of cases in this Court,[2] beginning with *Handly v. Anthony, supra*. But all of those cases involved the boundary line between Indiana and Kentucky, and Ohio, not being a party to any of those cases, is not bound by them. Furthermore, the issue that Ohio now seeks to raise, i. e., that its boundary with Kentucky lies at the middle of the Ohio River,

[1] H. B. Adams, *Maryland's Influence on Land Cessions to the United States*, Johns Hopkins University Studies in History and Political Science, Third Series (Vol. III) pp. 7-64; Jensen, *The Cession of the Old Northwest*, 23 Mississippi Valley Historical Review, pp. 27-48; Jensen, *Creation of the National Domain*, 26 Mississippi Valley Historical Review, pp. 323-342; Hinsdale, *The Old Northwest*, pp. 303-354.

[2] This was the position taken in our original complaint.

was never properly before the Court in any of the Indiana-Kentucky cases. The *Handly* case arose from a dispute between two private parties over a tract of land projecting into the River from the Indiana side, the one party claiming under a grant from Kentucky, the other from Indiana. The question was whether the land lay within Indiana or Kentucky. Chief Justice Marshall, writing for the Court, stated the law to be that, where a river is the boundary between two states, each holds to the middle of the stream, if neither was the original owner of the entire river; but, when one state is the original proprietor on both sides and divests itself of the territory on one side only, the original state retains the entire river within its boundaries. 5 Wheat. 379. Then, having simply *assumed* that Virginia had title to the Northwest Territory at the time of her Cession in 1784, Chief Justice Marshall held that Virginia retained title to the entire Ohio River. 5 Wheat. 376-379. However, since a "river" was defined to be only the flowage between the normal low marks, and since the land in question lay above the low water mark on the Indiana side, the Court ruled in favor of the Indiana claimant. It does not appear that the Indiana party made any argument that the Indiana boundary extended to the middle of the Ohio River, or that he challenged the Court's assumption of Virginia's title to the Northwest Territory, and, of course, this was unnecessary in view of the outcome.

The second case was a boundary dispute between the State of Indiana and the Commonwealth of Kentucky, again as to a tract of land lying close to the Indiana bank of the River. *Indiana v. Kentucky*, 136 U. S. 479 (1889). An examination of the record in this Court (No. 2, Original, 1889 Term) shows that, when the evidence was heard by commissioners appointed by

the Court, the only issue appeared to be whether the tract in question lay above, or below, the low water mark on the Indiana side. Upon argument before this Court, however, Indiana urged, without having laid any foundation in the record, that her boundary with Kentucky lay in the middle of the Ohio River. 136 U. S. 488-493. The Court brushed this contention aside by reference to its decision in *Newby*, 136 U. S. 506-508, and made the same assumption that Kentucky's territory extended to the low water mark on the northwest side of the River because she had "succeeded to the ancient right and possession of Virginia, * * *." 136 U. S. 508. These two decisions were followed without re-examination in *Henderson Bridge Co. v. Henderson*, 173 U. S. 592 (1899), and in *Wedding v. Meyler*, 192 U. S. 573 (1904).

The brief for the State of Indiana in *Indiana v. Kentucky*, supra, pointed out that the State of Ohio claimed that its boundary line with Kentucky lay in the middle of the Ohio River, and that Ohio regarded Chief Justice Marshall's language on that aspect of the *Newby* case as *dicta*. 136 U. S. 480; and see the brief in this Court's records, pp. 18-25. Ohio's position has been most thoroughly presented in an extraordinary argument made by Samuel F. Vinton before the General Court of Virginia in *Commonwealth v. Garnier*, 44 Va. 655 (1846). This was a case in which citizens of Ohio had been indicted for aiding Virginia slaves to escape across the Ohio River. Mr. Vinton, who had been asked by the Governor of Ohio to represent the defendants, contended that the boundary lay in the middle of the River and that the alleged criminal acts had taken place in Ohio territory. The Virginia court held that, under this Court's decision in *Newby*, the boundary lay at the low water mark on the Ohio side; but, since the jury had found that the alleged acts occurred above the low water mark, the court held that they

took place in Ohio and the indictment was dismissed.[3]

For other expressions of the Ohio view, see *Booth v. Shepherd*, 8 Ohio St. 244, 248 (1858); *Sebastian v. Covington & Cincinnati Bridge Co.*, 21 Ohio St. 451, 452, 456 (1871); *Covington & Cincinnati Bridge Co. v. Mayer*, 31 Ohio St. 317, 326-328, 329 (1877). See also the opinion of Mr. Justice Brewer, while still a district judge, in *St. Joseph & G. I. R. R. Co. v. Devereaux*, 41 F. 14.

## III

## THE EVIDENCE THAT THE BOUNDARY LINE LIES IN THE MIDDLE OF THE RIVER IS OVERWHELMING.

The claim of the Commonwealth of Kentucky to practically the entire Ohio River, through that portion of its course which runs between Ohio and Kentucky, rests upon Virginia's ancient claim of title to the land which lies to the north of that section of the River. Virginia's claim of title rests, in turn, essentially upon one British document, i. e. the charter granted to the London Company in 1609 by King James I, the terms of which were broad enough to include a vast tract from the Atlantic to the Pacific including what ultimately became the Northwest Territory.

[3]Mr. Vinton's lengthy argument has been printed several times, most recently in 4 Ohio Archeological and Historical Publications 84-126. The various opinions of the Virginia judges in the *Garner* case cover over 130 pages of the reporter's volume (44 Va. 655-786) but they do not give a true picture of Mr. Vinton's argument. It is interesting to note that the Commonwealth of Virginia was also dissatisfied with the *Handly* opinion. It argued that its boundary ran to the top of the bank on the Ohio side.

Such grants have frequently been described as "extravagant" and "absurd." See the opinions of Chief Justice Marshall in *Worcester v. Georgia*, 6 Pet. 515, 544 (1832), and *Johnson v. McIntosh*, 8 Wheat. 543, 592 (1823). But, whatever may have been the validity of the original grant, other British documents show that the charter was revoked and that the western boundary of the Colony of Virginia was sharply restricted.

In 1624 the King, dissatisfied with the London Company's management of the colony, instituted a *quo warranto* proceeding which resulted in a decree revoking the charter, and Virginia became a Crown colony. 1 Marshall, *George Washington*, page 55. Thereafter, the French, moving down from Canada and up from New Orleans, took over the middle of the continent for more than a hundred years until driven out by the British in the French and Indian War (1756-1763). By the Treaty of Paris, which terminated that War in 1763, the French ceded to the British Crown the entire eastern Mississippi valley north of the Ohio River and west of the Alleghany Mountains. Shortt and Doughty, *Documents Relating to the Constitutional History of Canada*, 1759-1791, p. 66. No part of that territory north of the Ohio River was ever thereafter attached by the Crown to the Colony of Virginia. On the contrary, the Crown issued a Proclamation on October 10, 1763, by which all the land west of the Alleghany Mountains was reserved for the Indian tribes who had assisted the British during the war, and the American colonies were specifically confined to the eastern side of the mountains. Illinois Historical Collections, Vol. X, *The Critical Period, 1763-1765*, pp. 39, 43-44. This caused great discontent among the colonists, and, as a result, in November 1768, the Crown entered into the Treaty of Fort Stanwix with the Indians of the Six Nations, by the terms of which the

the boundary between the Indian lands and the colonies was pushed westward across the mountains to a line running from northwestern Pennsylvania down the Allegheny and the Ohio Rivers. Again, the colonists were prohibited from crossing to the north and west of that line. The treaty was signed in the presence of a representative of Virginia. VIII *Documents Relative to the Colonial History of the State of New York*, pp. 135-137.[4] Finally, in 1774 the Quebec Act, enacted by Parliament and approved by the Crown, annexed all the territory north and west of the Ohio River to the the Province of Quebec. I *American Archives* 216-220, 914.

Virginia's leaders were well aware of the flimsiness of her title claim. George Washington, writing to an agent about possible claims to western lands, clearly realized that he could not obtain a valid title until the provisions of the royal Proclamation of October 1763, had been altered. *The Washington-Crawford Letters*, C. W. Butterfield, ed., pp. 1-5. And Madison, representing Virginia in the Continental Congress during the debate on the western lands wrote to Jefferson, at that time Governor of the State, urgently requesting that documentary proof of Virginia's title be forwarded to him. I *Papers of James Madison*, H. D. Gilpin, ed., pp. 106-109, 119-124. Jefferson was unable to comply.

We submit that the documentary proof alone, of which this Court can take judicial notice, is sufficient to establish that Virginia's boundary at the time of her Cession in 1784, so far as

[4]The line drawn by the Treaty of Fort Stanwix ran along the *south* and *east* bank of the Ohio River. See p. 136 of the above citation.

that portion of the Ohio River which flows between Kentucky and Ohio is concerned, went no farther to the north than the middle of the River.[5]

[5] It appears, from the course of this Court's decisions, that the middle of the river is the thalweg, or main channel of navigation. *Iowa v. Illinois*, 147 U. S. 1, 4-14; cf. *Arkansas v. Mississippi*, 250 U. S. 39, 45; *New Jersey v. Delaware*, 291 U. S. 361; cf. *Arkansas v. Tennessee*, 397 U. S. 66, supplemented, 399 U. S. 215. This is not a case like *Texas v. Louisiana*, No. 36, Original, Term, 1968, pending on motion for judgment, in which the boundary between the two States was specifically described as "the mid-dle" of the stream.

## CONCLUSION

It is respectfully submitted that leave to file the Amended Complaint should be granted.

WILLIAM J. BROWN,
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*The State of Ohio.*

August, 1971.

## CERTIFICATE OF SERVICE

I, Joseph M. Howard, Assistant Attorney General of The State of Ohio, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of August, 1971, I served copies of the foregoing motion for leave to file amended complaint, proposed amended complaint and brief in support, by first class mail, postage prepaid, to the Office of the Governor and Attorney General, respectively, of the Commonwealth of Kentucky.

JOSEPH M. HOWARD
Assistant Attorney General